



AF/IFW  
PATENT APPLICATION

IN THE U.S. PATENT AND TRADEMARK OFFICE

Applicant(s): Gianfranco D'AMATO  
Title: COLLAPSIBLE CONTAINER


Serial No. : 10/630 378                      Group: 3781  
Confirmation No.: 8950  
Filed : July 30, 2003                      Examiner: Grosso  
International Application No.: -  
International Filing Date : -  
Atty. Docket No.: GKS 397

Mail Stop Appeal Brief-Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

FIRST CLASS MAILING CERTIFICATE

Sir:

I hereby certify that this correspondence is being deposited with the United States Postal Service under 37 CFR 1.8 as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on April 2, 2007.

  
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Correspondence: Appellant's Reply Brief Under 37 CFR §41.41  
including enclosures listed thereon

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APPELLANT'S REPLY BRIEF UNDER 37 CFR §41.41

Sir:

This is a Reply Brief under CFR §41.41 to the Board of Patent Appeals and interferences of the United States Patent and Trademark Office addressing the Examiner's Answer dated March 1, 2007 in the above-identified application.

One copy of Appellant's Reply Brief is filed herewith.

B. STATUS OF CLAIMS

The above-identified patent application as amended contains 30 claims, namely Claims 1, 2, 4-10, 12-20, 22-27 and 30-35 which have been finally rejected and are being appealed.

Claims 3, 11, 21, 28, 29, 36 and 37 have been cancelled.

C. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The rejections presented for review are as follows:

1) Claims 1, 2, 4-10, 12-20, 22-27, 30, 31, 33 and 34 stand rejected as being unpatentable over JP 56-156777 (JP '777) in view of McLaughlin (U.S. Pat. No. 6 210 776) and Summons (U.S. Pat. No. 4 863 014).

2) Claim 32 stands rejected as being unpatentable over JP '777 in view of McLaughlin and Summons as applied to Claim 1, and further in view of Halligan (U.S. Pat. No. 4 574 987).

3) Claim 34 stands rejected as being unpatentable over JP '777 in view of McLaughlin, Summons and Beall (U.S. Pat. No. 4 324 338).

4) Claim 35 stands rejected as being unpatentable over JP '777 in view of McLaughlin, Summons and Beal as applied to Claim 34, and further in view of Halligan.

Claims 1, 2, 5, 6, 25, 26, 30, 32, 34 and 35 are each separately patentable.

Dependent Claims 3, 4, 7-10, 12-20, 22-24, 27, 31 and 33 stand or fall with Claim 1.

D. ARGUMENT

COMMENTS RE REJECTION IN EXAMINER'S ANSWER

The following arguments and comments supplement the arguments provided in Appellant's Appeal Brief filed November 29, 2006 with regard to Claims 1 and 34 as discussed below.

CLAIM 1

Appellant's Claim 1 recites a container that is formed from a transparent and fluid tight material which is dimensionally stable, and wherein "the container and the material are stable at least within the temperature range of -50°C to +120°C". These properties are disclosed at paragraph [0042] and elsewhere in Appellant's specification.

There is no disclosure in the applied prior art of a container that is stable within the entirety of Appellant's claimed temperature range. Appellant's claimed temperature ranges allows for use of the container with extremely cold or extremely hot food products.

For the above reasons, Claim 1 further distinguishes the applied prior art.

CLAIMS 1 AND 34

JP '777 does not appear to disclose a withdrawal opening with "a bent opening edge" as recited in Appellant's Claims 1 and 34. Moreover, this feature clearly is not provided in McLaughlin or Summons. Further, as discussed at Paragraph [0011] of Appellant's specification, even if transparent materials were provided at a bent opening edge, transparency would be negatively influenced by the bending or rolling of the edge.

CLAIM 34

Paragraph [0012] of Appellant's specification discloses that the collapsible container is compressed for removing food and then returns to essentially its original shape so that the

food is retracted back into the interior of the container. This feature is recited in Appellant's Claim 34. JP '777, as modified by Summons and McLaughlin, is not believed capable of returning to essentially its original shape.

#### COMMENTS REGARDING RESPONSE TO ARGUMENT

The following comments address the Response to Argument set forth at pages 9-14 of the Examiner's Amendment.

#### CLAIM 1

The Response to Arguments states that McLaughlin and Summons are tube-type containers and that McLaughlin is used to teach the use of multi-layer all-plastic material, while Summons is used to teach the use of multiple transparent layers.

For the reasons set forth in Appellant's Appeal Brief, there is no motivation to combine JP '777 with McLaughlin and Summons. Moreover, McLaughlin and Summons are tube containers for toothpaste or the like. The Summons container is collapsible, but is not "dimensionally stable" as recited in Appellant's Claim 1. Instead, when force is applied to squeeze and collapse the container of Summons, the outer walls of the containers maintain the newly formed position, rather than being dimensionally stable and returning to their original position as in Appellant's Claim 1. Moreover, McLaughlin does not disclose an opening with a bent edge or transparent layers. Further, McLaughlin is not formed from a blank as recited in Claim 1.

If the multi-layer plastic laminates and material of McLaughlin and Summons were substituted for or provided for the container walls of JP '777, the resulting container would not be dimensionally stable.

Page 10, lines 5-9 of the Examiner's Answer states that the claims are unclear as to when the container is to be "dimensionally stable". Appellant believes Claim 1 clearly describes a two-dimensional blank that is rolled and connected

with itself in an overlap region, which defines the shape of the container that is then dimensionally stable. Thus, the finished container is dimensionally stable.

Moreover, page 10, lines 9-12 of the Examiner's Answer states that "The container of JP '777 as modified by McLaughlin and Summons would be dimensionally stable after assembly into the container form with the bent edge of the withdrawal opening maintaining the dimensions of the opening and the length and width dimensions of the container being established by the forming process". Appellant traverses this statement. Forming the bent edge with a withdrawal opening would not maintain the dimensions of the container of JP '777 as modified by McLaughlin and Summons. McLaughlin and Summons provide the walls for JP '777, and both McLaughlin and Summons disclose containers that are not dimensionally stable. Instead, squeezing the tubes in McLaughlin and Summons changes the overall shape of the tube. The bent edge of the withdrawal opening would not change the result as in McLaughlin the tube shoulder 34 is solid but does not appear to enable the other portions thereof to be dimensionally stable. Further, in Summons the nozzle 20 appears to be solid, which does not prevent the side wall 14 from collapsing when the tube is squeezed. Providing McLaughlin or Summons with a bent edge wall as in JP '777 would further decrease their dimensional stability.

Further, page 10, lines 16-20 of the Examiner's Answer states that the behavior of the McLaughlin and Summons containers is to some extent a function of the structure of the containers at their open ends, and that the withdrawal opening of JP '777 allows the stored material to more easily return to the container restoring it to its original position. Page 10, lines 20-22 of the Examiner's Answer then states that the "nature of the response of the filled container to an applied squeezing force would depend on the product in the container and the amount of force applied".

Appellant's Claim 1 does not recite the presence of a product in the collapsible container. Thus, it is unclear how one can rely on a stored material in the container to obtain the result recited in Appellant's Claim 1. Further, Appellant's invention restores the container to its original position without the assistance of a product therein. Further, there is no reasonable basis or proper motivation to hypothesize that placing a material in the container could possibly result in the claimed invention.

#### CLAIM 26

Page 12, lines 13-17 of the Examiner's Answer states that it would have been obvious to "make the print in such a way that is only visible after parts of the contents is removed since it has been held that optimization of a results effective variable involves only routine skill in the art". *In re Boesch*, 205 USPQ 215 (CCPA 1980).

As admitted at page 12, lines 10-13 of the Examiner's Answer, the print color provides a yes/no indication for the presence of product in the container. Providing the container with print that is visible after removal of product is not "an optimization of a results effective variable".

*In re Boesch* is directed to a nickel base alloy having different amounts of different metals to obtain a nickel base alloy with desirable properties. To summarize, the prior art disclosed the basic concepts including how to limit sigma phase properties in a base alloy and obtain the desired properties. The patent applicant in *In re Boesch* was unable to provide unexpected results for the claimed nickel base alloy having specific ranges of elements.

The *In re Boesch* decision is not relevant as Appellant's Claim 26 does not include a result effective variable (such as variations in quantities of metals or alloys). Instead, Appellant's Claim 26 recites the additional new feature of a print that is "only visible after at least a part of the food is removed".



CLAIM 34

Page 10, last line through page 11, line 2 of the Examiner's Answer states that the "dimensional stability limitation as related to the behavior of the filled container during use is not recited in the claims". This is with specific reference to Appellant's appealed Claim 1, but states that the dimensional stability is not defined by usage of the container in any of Appellant's claims.

Appellant's Claim 34 specifically recites that the "container is dimensionally stable after having been shaped so that said container is deformable when a force is applied to the outer layer thereof to enable consumption of at least part of the food and so that said container returns to essentially its original shape when the force is removed whereby the food is retracted back into an interior of the container until another force is applied to the outer layer". In this way transporting an open container is less likely to spill food as the food is arranged more deeply in the container. This language clearly defines the dimensionally stable container. Such a result could not be provided by the JP '777 container when modified with the container walls of McLaughlin and Summons.

E. CONCLUSION

Claims 1, 2, 4-10, 12-20, 22-27 and 30-35 are believed allowable for the reasons set forth in Appellant's Appeal Brief. The above arguments in this Reply Brief merely show how Claims 1, 26 and 34 further distinguish the applied prior art.

Respectfully submitted,

A handwritten signature in cursive script that reads "Brian Tumm". The signature is written in dark ink and is positioned above a horizontal line.

Brian R. Tumm

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